IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

CWP. NO. 719 OF 2001.

Judgment Reserved on: **9.4.2007**

Date of Decision: 20.4.2007

HRTC & others **……Petitioners**

Versus

Sarswati Devi & others **…… Respondents.**

Coram

The Hon'ble Mr. Justice V.K. Ahuja, Judge

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?

For the Petitioners: Mr.Ashok Sharma,Advocate.

For the respondents : Mr. P.P. Chauhan, Advocate. No.1 and 3 to 7.

Per Kuldip Singh, J

The petitioners through this petition have assailed order dated 7.7.2000, Annexure P-7 passed by Tribunal in OA NO.1529/91, whereby the Tribunal allowed the Original Application and quashed Annexure- PB, penalty of removal from service by the Disciplinary Authority imposed upon deceased driver Satpal and Annexure- PA dated 26.8.1991 communication dismissing the appeal filed by deceased driver against penalty.

The facts in brief are that one Satpal the predecessor of respondents was working as driver in the petitioner No.1-Corporation. He was charge-sheeted for various acts of omissions and commission. The case against Satpal was that while on the roll of the Corporation and functioning as driver, he caused late departure of Mandi-Rohanda bus service No.HPM-879 on 22.3.1983 by one hour thereby put the traveling public to great in-

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whether reporters of Local Papers may be allowed to see the Judgment?

convenience. The further case against him was that while on the rolls of the Corporation on the relevant date he took alcohol during duty hours and therefore, violated Rule 2 (b) of the CCS (conduct) Rules 1964. Satpal filed reply to the charge-sheet and pleaded not guilty. The Corporation conducted an inquiry. The Enquiry Officer submitted inquiry report to the Disciplinary Authority holding delinquent official guilty under both the charges. The Disciplinary Authority issued a show cause notice to the delinquent official why penalty of removal from service be not imposed on him. After receipt of the reply of the delinquent official, the Disciplinary Authority imposed penalty of removal from service on 3.5.1990 with immediate effect. Satpal filed an appeal to the Appellate Authority which was rejected and rejection of the appeal was communicated to him.

Satpal filed an Original Application before Tribunal for quashing the order of removal from service and also the order rejecting his appeal. During the pendency of Original Application Satpal, driver died and the respondents were brought on record as legal representatives of original applicant. The Original Application was allowed by Tribunal vide order dated 7.7.2000, Annexure P-7. The Tribunal held that delinquent official would be deemed to be on duty till his death and the respondents would be entitled for every benefit including financial ones as are admissible in accordance with the rules.

The petitioners have assailed the order dated 7.7.2000, Annexure P-7 on the grounds that Tribunal has committed an error of law by appreciating the evidence on record. It is not a case of no evidence. The Tribunal has no jurisdiction to reassess the evidence and take different view even if, two views are possible. The Tribunal has erred in setting aside Annexure- PB order of removal from service and the communication Annexure- PA informing Satpal dismissed of his appeal. In any case the Tribunal has mis-appreciated and ignored material evidence on record in

the enquiry. The deceased driver had committed serious misconduct which could not be ignored by the authorities. The authorities have properly appreciated the evidence which has come on record in inquiry. There is no allegation of violation of procedure during the enquiry. On these grounds, the petitioners have assailed the impugned order.

The respondents have filed a reply in which several preliminary objections have been taken. It has been submitted that writ petition is not maintainable. It has been pleaded that penalty imposed was based on no evidence and the orders passed by Authorities were set aside. The Tribunal has looked into the matter at length and the impugned order is clear to the effect that Satpal was put to harassment without any fault. On merits it has been submitted that the report of the Enquiry Officer was totally biased. The Disciplinary Authority never applied its mind to the facts on record and had acted in a perverse manner without considering the documents on record. It has been denied that Satpal had taken Liquor while on duty. Satpal was to attend the Court of Judicial Magistrate along with his wife and daughter on 23.3.1983where his wife and daughter were to appear as witnesses . Satpal moved an application for 1 ½ days casual leave on 22.3.1983 at 2.30 p.m. He was assured of leave and therefore he went away. He came to the Bus Stand for personal work and the entire version of the petitioners is false. It has been denied that on 22.3.1983 after lunch Satpal was on duty. The respondents thus prayed for dismissal of the writ petition.

We have heard the learned counsel for the parties and have also gone through the record.

Learned counsel for the petitioners has submitted that the Tribunal has committed an error of law in re-appreciating the evidence which has come on the record in enquiry. It is not a case of no evidence nor the conclusion drawn by the Disciplinary Authority and Appellate Authority on

the basis of material on record is perverse. In any case, if two views are possible from the record and the authorities have taken a possible view even then the Tribunal has no jurisdiction to take another view. The learned counsel for the proposition that the Tribunal has erred in appreciating the evidence has relied ***AIR 1996 Supreme Court 1232, State of Tamil Nadu and another vs. S. Subramaniam.***

In para-4 of the judgment the Supreme Court has held :-

> " ***that the only question is whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323A and invested the same on the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence. Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is consistent view of this Court".***

The learned counsel has also relied upon ***AIR 1997 Supreme Court 1900, Government of Tamil Nadu and others vs. Vel Raj*** in support of his submissions that Tribunal exceeded his jurisdiction in re-appreciating the evidence. The Hon'ble Supreme Court in para-6 of the report case has observed as follows:-

> "***The learned counsel for the appellant was also right in his criticism that the Tribunal transgressed its jurisdiction in examining the evidence as if it was an appellate authority. The law on this point is also now well-settled. The Tribunal obviously committed a mistake in re-examining the evidence and holding that it did not deserve to be accepted because of the inconsistencies therein. The Tribunal was not holding a criminal trial and, therefore, ought not to have exonerated the respondent by holding that it was not proved " beyond all doubts that the applicant had consumed prohibited liquor". The finding recorded by the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved."***

. On the contrary, learned counsel for the respondents has submitted that the view taken by the authorities in enquiry was perverse. It is a case of no evidence. The Tribunal has jurisdiction to re-appreciate the evidence and in support of his submission he has relied upon ***AIR 1999 Supreme Court 3734, Yoginath D. Bagde vs. State of Maharashtra and another.*** In para-53 of the report the Hon'ble Supreme Court has observed as follows:-

> ***" It was lalstly contended by Mr. Harish N. Salve that this Court cannot reappraise the evidence which has already been scrutinized by the Enquiry Officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Art. 226 or 32 of the Constitution, act as the Appellate Authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr. Salve is in very broad terms and cannot be accepted. The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter".***

In the present case on the basis of material on record, it cannot be said that findings recorded by Disciplinary Authority and Appellate Authority are perverse and are not supported by the record or the findings recorded by them are such which no reasonable person would record on the basis of material on record, therefore, ***Yoginath D. Bagade*** case supra is not applicable in the facts and circumstances of the case.

In enquiry report, Annexure P-1, the Enquiry Officer has considered the evidence in detail. After receipt of the enquiry report show cause notice dated 11.12.1987, Annexure P-2 was issued by the Disciplinary Authority to Satpal driver who submitted reply and vide Office Order dated 3.5.1990, the Disciplinary Authority imposed the penalty of removal from service upon Satpal driver with immediate effect. It is an admitted fact that Satpal filed an appeal against the penalty of removal from service which was rejected by the Appellate Authority. It has come on record that duty of Satpal on 22.3.1983 was in Bus No. HPM-879 on Mandi-Rohanda route at 4.45 p.m. but till 5.45 pm he did not report for duty and therefore, another Bus No.HPM-1605 was sent on that route after delay of one hour which caused in-convenience to passengers . On that date at 6 pm when he was deputed on Mandi –Lag route at that time he was found under the influence of liquor. He was medically examined at District Hospital, Mandi on 22.3.1983 at 6.50 pm. The Medical Officer on medical examination of Satpal has observed as follows:-

(i) Smell of alcohol presents.

(ii) Pupil dilated and reacting to light.

(iii) B.P. 140/90 mm Mg.

(iv) Speech: Slurring of the speech.

(v) He can not walk in straight line.

(vi) Not co-operative.

The Medical Officer ultimately give his opinion that patient has consumed alcohol and is intoxicated.

The reply of Satpal to charge-sheet has been reproduced in the impugned order. According to the reply Satpal reached Bus Stand, Mandi on 22.3.1983 with Pandoh-Mandi bus via Gohar. He submitted an application for 1 ½ days Casual leave to Adda Incharge for attending some court case on 23.3.1983. He was to contact his advocate on 22..3.1983 at 3.30 pm. He (Satpal) was in hurry and left to see his counsel. He denied that Mandi-

Ruhanda bus was sent by an hour late as he did not report for duty. He admitted that he had consumed liquor but at that time he was not on duty and he was fully conscious. He took the stand that when he was not on duty therefore, there is no question of charge No.2 against him.

In enquiry Ravinder Gupta, receptionist, Bus Adda Mandi, Ravinder Kumar, driver and Regional Manager, Mandi were examined on behalf of the Department and they have supported the case of the Department. The delinquent official had produced Churu Ram and Bishan Chander, drivers. The Enquiry Officer submitted a detail enquiry report in which he has discussed the evidence. The Disciplinary Authority on the basis of material on record of inquiry has taken action against delinquent official and imposed penalty of removal from service which has been upheld in appeal.

The delinquent official has taken the stand that he applied for 1 ½ days casual leave and left the bus stand to meet his counsel . He admitted that he had taken liquor. It has also come on record that since delinquent official did not report for duty in time therefore, Mandi-Rohanda bus was delayed by an hour and another bus was sent on that route which had caused inconvenience to the passengers. Even if, it is assumed that delinquent official had applied for leave as alleged by him but merely by submitting leave application, the delinquent official had no right to absent from duty till his leave was sanctioned. There is nothing on record that infact leave was sanctioned and no leave sanction order was placed on record either during enquiry or before the Tribunal or even in this Court. It is thus clear that delinquent official consumed alcohol and absented from duty which caused great inconvenience to passengers. The absence of delinquent official, caused delay to Mandi-Rohanda bus by an hour and another bus with driver was sent on that route which had caused inconvenience to the passengers. Taking of liquor by driver of bus during duty hours is a serious matter and it cannot be taken lightly.

From the above discussion, it cannot be said that view taken by the Authorities in departmental enquiry resulting into removal from service of delinquent official as well as order passed by the Appellate Authority are based upon no evidence and they have taken perverse view. The Tribunal has erred in re-appreciating the evidence and holding that removal from service of delinquent official namely Satpal is wrong and illegal. The order of removal from service of Satpal by the Disciplinary Authority and order passed by the Appellate Authority rejecting the appeal of the delinquent and confirming the order passed by the Disciplinary Authority have been wrongly set aside by the Tribunal vide order dated 7.7.2000, Annexure P-7.

In view of above discussion, the writ petition is allowed. Impugned order dated 7.7.2000 passed by Tribunal in OA No.(M) 1529 of 1991, Annexure P-7 is set aside. However, if any amount had already been paid to respondents pursuant to impugned order that amount shall not be recovered from them. The parties are left to bear their own costs.

(V.K. Ahuja)
Judge

(Kuldip Singh)
Judge

April 20, 2007(sks)